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Date: January 24, 2014.
My reference: 0013436
Client (1): MAGDA SALEM ISMAIL
Legal counsel (1) IGNACIO AYALA GÓMEZ
Client (2): JOSÉ MARÍA ALONSO PUIG and others.
COURT: Central Investigation Court no. 3 of the Spanish National Court
Proceedings: 7/2001, - ROGATORY COMMISSIONS

Resolution: WRIT decreeing the LIFTING OF CAUTIONARY MEASURES ADOPTED/SERVICE OF NOTICE AND NOTIFICATIONS ISSUED BY THE COURT.

Date of Court Resolution: January 24, 2014.------ Notified: January 24, 2014.

Best regards,

SPANISH JUSTICE ADMINISTRATION

CENTRAL INVESTIGATION COURT no. 003.
MADRID
C/PRIM 12, 2nd floor, MADRID
Telephone: 91 3973303
Fax: 913083024

Court proceedings no: 28079 2 2011 0012182
GUB 11

ROGATORY COMMISSION 0000007 /2011

WRIT

In Madrid on the twenty fourth day of January of the year 2014.

FINDINGS

1. On March 4, 2011, the international rogatory commission was created and on March 9 it was ordered to investigate the persons mentioned in the request submitted by the judicial authorities of Egypt.
The abovementioned commission was extended on February 28, 2011, and in what pertains to this Writ, following verbal note 182/11 issued by the Spanish Embassy in Egypt the judicial cooperation was requested in order to investigate the assets of Hussein Salem Fawzi, his former wife, his son and daughter, requesting the freezing of assets on the grounds of a Freezing Order issued by the State Prosecution of Egypt (order 39/2011, March 2), subsequently ratified by he Criminal Court as may be gathered from such note (folio 1182).

Following a writ issued on October 25, 2012, attached to folio 4937, it was resolved "*to decree the cautionary freezing of the balance of the bank accounts, deposits, securities, titles, shares, public debt, contents of safety boxes, transfers withheld by financial institutions and other existing financial assets in the name of these individuals or companies",* Hussein Salem Fawzi, Khaled Salem Ismail and Magda Salem Ismail, -all of them Spanish citizens, and the company DNH Consultores Internacionales XXI, S.L. incorporated in Spain.

In another writ issued on the same, the cautionary lien over four motor vehicles was recorded, two of them owned by Mr Hussein Salem Fawzi and the two others owned by his daughter, Magda Salem Ismail.

2. At the Central Investigation Court number 5 preliminary proceedings no. 130/2011 are being conducted against Hussein Salem Fawzi and Khaled Salem Ismail.

In such proceedings, their court attorneys submitted a pleading dated December 10, 2013 requesting the dismissal of the suit and providing as a support for such pleading, the judgment delivered in the case 189/2011 by the Cassation Court of

Egypt, annulling the trial held on June 28, 2012 which had led to the rogatory commission that was handled by this Court. This judgment has been legalised by a competent official of the Spanish Embassy in Egypt.

3. On October 8, 2013, a pleading is submitted to this Court providing a copy of the same in the Arabic language and the translation into the Spanish, English and French language of the abovementioned judgment which annulled the prior trial, returning the proceedings to the Criminal Court of El Cairo so that a new trial may be conducted with a different panel of judges than the ones who delivered the initial sentence.

4. By means of a Court Order dated December 9, 2013, it was requested from the Central Instruction Court number 5 a testimony of the sentence delivered by the Cassation Court, Criminal Division 2 B of Egypt regarding the Case 189/2011 filed in the roll of the aforementioned preliminary proceedings.

Likewise, it was resolved to conduct service of notice on the Embassy of Egypt in Madrid so that within the term of twenty (20) days as from receipt of notice it confirmed whether they wished to maintain the petition of freezing of assets issued within the framework of this rogatory commission on October 25, 2012, justifying in such case, the judicial resolution which supports such request and if such cautionary measures are to be maintained for an umlimited period of time.

5. As of this day, no reply has been received, the acknowledgment of receipt by the Embassy dates from December 17, 2013.

LEGAL CONSIDERATIONS

1. The Spanish Constitutional Court with regard to relief appeal no. 3251/2012 C for constitutional protection issued a judgment on December 10, 2012 in which it granted the relief sought, annulling the writs issued by the Fourth Section of the Criminal Division of the Spanish National Court (Audiencia Nacional) of March 2, 2012 (roll number 25/2011) and of the Plenary Session of the Criminal Division of May 18, 2012 (review appeal no. 19/2012), considering that the right to an effective judicial protection of Hussein Salem Fawzi (article 24.1. of the Spanish Constitution) had been breached.

Previously, an identical situation had ensued with regard to the son and daughter of Mr Hussein Salem Fawzi (relief appeals nos. 3250/2012 and 3252/2012).

Among other considerations, the Constitutional Court states that as the individuals requesting the appeal relief are Spanish citizens and in view that no extraditiont treaty exists between the Kingdom of Spain and the Arab Republic of Egypt, the prohibition of not handing over Spanish nationals applies in full, when the Spanish courts are competent to hear such offences as set out in article 3.1 of the Spanish Extradition Act (Law 4/1985, March 21).

The prohibition of handing over nationals, as pointed out by the Constitutional Court, is based on the concept of state sovereignty, and the fact that such extradition is refused does not entail that the actions invoked as

offences by the Egyptian authorities shall remain unpunished, because article 23.2 of the Spanish Judiciary Act (the LOPJ) states that Spanish courts are competent to hear any actions considered as offences under the Spanish criminal code, even if they have been perpetrated outside the national territory.

2. In consequence of the above, we are before extremely grievous in rem cautionary measures that were adopted one year and four months ago, and which virtually entail that all the assets owned by Spanish citizens are frozen, in spite of the fact that their extradition was refused, and considering further that these measures were adopted on the basis of criminal proceedings instituted in Egypt which led to a sentence that has been annulled.

On the other hand, judicial proceedings are currently under way in Spain due to the jurisdictional faculties vested in the Spanish courts by article 23.2 of the Judiciary Act.

Finally, even if the final judgment delivered in this case would probably have not been different, for fuller guarantees, notice was served on the competent authority of the Arab Republic of Egypt in order to ascertain if the Egyptian State confirmed its petition of maintaining the petition for the freezing of assets, also in order to avoid passing a decision without having heard the other party, and in fact more than twice the allocated time for such confirmation has been granted, but no reply has been received.

In view of these circumstances, the individuals affected by the cautionary measures are entitled to the protection which as Spanish citizens they receive from the Constitution and the Spanish laws, wherefore it is not possible to place them in a situation of defencelessness, considering that on one hand they opposed to the extradition request and their right to not being extradited has been acknowledged and, on the other hand, proceedings are being currently conducted against them in Spain in the Central Investigation Court no. 5, whereby it is not possible to say that the actions investigated in Egypt are not punishable.

As a consequence of the foregoing, if the currently existing cautionary measures are maintained, such measures having been adopted by this rogatory commission within the framework of international legal cooperation, they would find themselves subject to an indefinite confiscation of their assets due to judicial proceedings in another country where they may not appear and defend themselves personally, except if they waived their rights granted by Spain to them as a sovereign considering that they are Spanish nationals.

Therefore, it is appropriate to lift the cautionary measures in rem (on properties and assets) adopted against Hussein Salem Fawzi, his son Khaled Hussein Ismail and his daughter Magda Hussein Ismail, notwithstanding, obviously, the ones which may be agreed within the framework of the legal proceedings conducted in Spain.

THIS COURT HAS DECREED

To lift the cautionary measures in rem adopted against Hussein Salem Fawzi and his son Khaled Salem Ismail and his daughter Magda Salem Ismail which were adopted in the resolution issued on October 25, 2012 within the framework of this international rogatory commission.

To the foregoing purposes I hereby order that due notice and notifications be served as appropriate.

Notice to be served of this Resolution to the Arab Republic of Egypt through its Embassy in Madrid and to Hussein Salem Fawzi, his son Khaled Salem Ismail and his daughter Magda Salem Ismail. (art. 270 of the Spanish Judiciary Act).

Decreed, adjudged, ordered and signed by the HON JUDGE JAVIER GÓMEZ BERMÚDEZ. Incumbent judge of the Central Investigation Court no. 003 of Madrid.
Attested.

REMARKS: All the foregoing has been carried out. Attested.